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## MEMORANDUM

**TO:** Utah Constitutional Revision Commission

**FROM:** Jerry Howe, Policy Analyst  
Robert Rees, Associate General Counsel

**DATE:** June 4, 2009

**SUBJECT:** This memorandum summarizes four meetings of the Constitutional Revision Commission concerning post-conviction appeals

During the 2009 General Session of the Utah Legislature, S.J.R. 14, "Joint Resolution -- Challenging the Legality of a Conviction or Sentence," sponsored by Senator Bramble, was debated in both the Senate and the House of Representatives. Although the resolution passed the Senate with 22 affirmative votes and six negative votes, it failed a vote of the House of Representatives with 35 affirmative votes and 38 negative votes.

The primary proponent of the measure, the Utah Attorney General's Office, has informed the commission that it intends to pursue passage of a constitutional amendment dealing with post-conviction appeals at the next general session of the Utah Legislature.

During the 2009 debate of S.J.R. 14, legislators expressed an interest in whether or not the issues contained in S.J.R. 14 had been studied by the Constitutional Revision Commission and, if so, what recommendation, if any, the commission had made to the Legislature on the issue of post-conviction appeals.

The Constitutional Revision Commission began its review of post-conviction appeals on October 11, 2007, and continued its discussion at three subsequent meetings, November 15, 2007, May 8, 2008, and December 5, 2008. The commission has yet to make a formal recommendation on post-conviction appeals.

Arguments made to the Constitutional Revision Commission in support of the passage of a constitutional amendment on post-conviction appeals:

- Unlimited post-conviction appeals make the death penalty a legal fiction;

- Unlimited post-conviction trials and appeals substantially delay justice for crime victims;
- The Utah Supreme Court has indicated that it retains independent constitutional and common law authority to review post-conviction petitions;
- The amendment grants full power to the Legislature over post-conviction review with the exception that the Legislature could never bar a claim for actual innocence;

Arguments in opposition to the passage of a constitutional amendment on post-conviction appeals include:

- The amendment is not limited to death penalty cases, but applies to all sentences and convictions;
- The amendment may violate Article V, Section 1 of the Utah Constitution, Separation of Powers, because it does not adequately prevent the Legislature from eliminating post-conviction relief;
- The amendment impedes the ability of the judiciary to correct its own mistakes with respect to sentencing and conviction;
- Substantial delays in death penalty cases are not caused by post-conviction appeals, but by a lack of resources and funding to defend death penalty cases;
- The amendment may cause more death penalty cases to be tried in federal courts rather than state courts.

With its continuing review of the post-conviction appeals process, the acting chair of the commission has developed a series of questions to help the commission better understand the general objectives and obstacles associated with this important issue. It is with responses to these questions that the commission would like to proceed.